HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 8343 OF 2004

DATE: 19.9.2007

Between:

R. Limbadri S/o R. Ramaswamy aged about 40 years.

…Petitioner

AND

1. The Chief General Manager (P&O), Northern Power Distribution Company of A.P. Limited, Warangal-4 and two others

….Respondents

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 8343 OF 2003

ORAL ORDER:

The petitioner questions the proceedings of the first respondent dated 20.3.2004 confirming the orders of the second respondent dated 9.6.2003 as arbitrary and illegal. He seeks to have the aforesaid orders quashed mainly on the ground that the contentions raised by him were neither examined by respondents 1 nor 2 herein.

Facts in brief are that the petitioner is carrying on business under the name and style of "M/s Softy Don", in Hanamkonda. The said business premises has two service connections. One in the name of the owner of the property (S.C.No. 25206) under commercial category II with a connected load of 1 Kilo Watt and the other in the petitioner's name (S.C.No. 29697) with a connected load of 8 Kilo Watts under industrial category III. The third respondent conducted an inspection on 16.12.2002 and observed that, while the service was released under the category industrial purpose for a load of 11 HP, the present load was only 3.26 KW, that it was being utilized for sale of ice creams, cool drinks and snacks, under commercial category II, that there is no process involved for making ice cream, that ice cream mix is stored in a chilling chamber, that the filling, through out-let of the chilling chamber, is served which amounts to commercial activity and that the consumer was indulging in malpractice. The petitioner

was directed to deposit half of the costs and the malpractice energy was quantified at Rs. 1,48,103/-. Thereafter, the second respondent issued show cause notice dated 24.1.2003 directing the petitioner to submit his written report within 30 days. In his explanation dated 5.3.2003, the petitioner stated that his business premises had two service connections viz., one under Commercial Category II and the other an industrial connection, that the meter in respect of service connection No. 25206 was running defectively and when the concerned Assistant Engineer was informed the premises was inspected and the petitioner was directed to pay Rs. 1,000/- towards replacement charges. Petitioner would state that he had deposited Rs. 1,000/- on 14.5.2002 vide D.D.No. 923801 drawn in favour of the Divisional Engineer, Operations, Warangal inspite of which neither was the meter replaced nor the internal wiring rectified. The second respondent quantified the malpractised energy at Rs. 1,47,840/- and the supervision charges at Rs. 150/- and directed the petitioner to pay the amount within 30 days. The petitioner preferred an appeal on 18.7.2003 contending that the second respondent did not consider the service connection, which he had been using for chilling up of the ice creams, that the process came under Industrial category and was recognized, as such, by the State Government. Petitioner would contend that since the activity carried on falls within the category III, it cannot be termed as malpractice and he could not be penalized for the failure on the part of the respondents in replacing the meter for the electricity connection in S.C.No. 25206 despite the petitioner having paid the requisite replacement charges.

In the counter affidavit, filed on behalf of the respondents, it is stated that S.C.No. 25206 had been under dis-connection since

August 1999 and that the petitioner was in no way concerned with the same, that on 16.12.2002, the other service connection No. 29697 was inspected and, based on the investigation, a clear case of malpractice of energy had come to light and an assessment notice dated 10.1.2003 was issued to the petitioner assessing the loss at Rs. 1,48,103/-, of which the petitioner paid Rs. 74,052/-. Respondents admit receipt of the explanation submitted by the petitioner on 5.3.2003. It is stated that the petitioner has nothing to do with the S.C.No. 25206 which belongs to the owner and that he was availing power supply through S.C.No. 29697 and, after considering the representation, the second respondent passed the final assessment orders dated 9.6.2003 confirming the assessment in favour of the respondent. It is stated that the petitioner has been utilizing power supply purely for commercial purposes under category II and that the petitioner had been utilizing only 3.26 KW and had not utilized fully the sanctioned load of 11 HP. It is further stated that, though the petitioner was registered as a small scale industry, no industrial activity has been undertaken in the petitioner's premises after obtaining electricity connection under Category III. Therefore, the petitioner was indulging in malpractice by utilizing the same for commercial purpose which falls under Category II.

The scope of certiorari jurisdiction under Article 226 of the Constitution of India is very limited. This Court would not sit in appeal over findings of fact recorded by Courts/quasi judicial tribunals. It is only when there is an error of law apparent on the face of the record would this court be justified in interfering with the order. Failure to take into account relevant material would be an error of law necessitating correction by this Court in exercise of its certiorari

jurisdiction. Before the appellate authority, i.e., the first respondent, the petitioner had specifically contended that in the premises wherein he was manufacturing ice-creams there were two service connections, one S.C.No. 25206 under category II and the other S.C.NO. 29697 under category III, that the process of manufacture of ice creams was being carried out through Italian machines, that S.C No. 25206 under Category II is still not under disconnection and that the petitioner had paid CC bill charges upto October 2003 vide PR No. 83039 dated 13.11.2003.

Dealing with these contentions, the appellate authority observed that, on verification of the records, it was clear that though the consumer had paid the required charges he was not ready to get the meter replaced. On review of the recorded consumption pattern of S.C.No. 25206 it was noticed that the meter had not recorded consumption for almost the entire period, that the status of the service was either 09(NIL Consumption) or 03 (UDC) in most of the period and that the consumer was intentionally utilizing the Category III service connection for his commercial use. Except stating that the meter is not recording the consumption for almost the entire period, details of the period when the meter was recording either under consumption or was under dis-connection have not been specified. The specific contention stated by the petitioner that he had paid CC bill charges up to October 2003 vide PR No. 83039 dated 13.11.2003 towards SC No. 25206 under Category II and that the said connection is still not under disconnection, has not been dealt with by the appellate authority.

Sri V. Ajay Kumar, learned counsel appearing on behalf of the respondents 1 and 2, submits that payment of this bill in October 2003

is subsequent to the inspection held in December 2002 and such payment is of no consequence. Learned counsel would submit that even in cases where there is no consumption, even then minimum charges may have to be paid and the amounts paid by the appellant may well have been towards payment of minimum charges. The order of the appellate authority is silent in this regard. It was for the appellate authority to have examined the matter and to have given a finding on aforesaid contention of the petitioner herein.

In the light of the specific assertion in his appeal that he had paid electricity charges upto October 2003 towards S.C No. 25206 in category II, and that the said connection was still not under disconnection, the first respondent ought to have examined the matter and ought to have assigned reasons for not accepting such a contention. Failure of the first respondent to do so would reflect non-application of mind necessitating the impugned order to be quashed. Since the impugned order of the first respondent is being quashed only on the ground of non-application of mind and for failure to assign reasons, it is open to the first respondent to examine the matter afresh and pass a reasoned order in accordance with law. In case the first respondent fails to pass a reasoned order, in compliance with principles of natural justice, within a period of three months from the date of receipt of a copy of this order, it is open to the petitioner herein to seek refund of the 50% amount already paid by him.

The Writ Petition is disposed of accordingly. However, in the circumstances, without costs.

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RAMESH RANGANATHAN , J

Dated: 19.9.2007
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